



## The Attorney General of Texas

JIM MATTOX  
Attorney General

December 23, 1985

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Honorable Randall L. Sherrod  
Criminal District Attorney  
Randall County Courthouse  
Canyon, Texas 79015

Opinion No. JM-406

Re: Whether a county may join  
with other governmental entities  
in a pool for the operating of a  
self-funding health plan

714 Jackson, Suite 700  
Dallas, TX. 75202-4506  
214/742-8944

Dear Mr. Sherrod:

You inform us that the majority of the Randall County Commissioners Court and some members of the governing body of the city of Amarillo are interested in forming a self-funded health plan pool, consisting of Amarillo and Randall County employees and their dependents, to provide health, medical, and hospital insurance to all members of this class and their dependents. You also inform us that the governing bodies of other entities such as nearby Potter County may also become interested in contracting with the other members of such a pool under the Interlocal Cooperation Act. The pool would be formed by contract among parties.

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El Paso, TX. 79905-2793  
915/533-3484

1001 Texas, Suite 700  
Houston, TX. 77002-3111  
713/223-5886

806 Broadway, Suite 312  
Lubbock, TX. 79401-3479  
806/747-5238

In that regard, you ask:

Does the Randall County Commissioners Court have the power to join the city of Amarillo or any other nearby state governmental entity in forming a pool for a self-funding health and hospitalization plan in the nature of self-insurance, receiving voluntary premiums from employees and elected officials of those entities to cover themselves and their dependents?

4309 N. Tenth, Suite B  
McAllen, TX. 78501-1685  
512/682-4547

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San Antonio, TX. 78205-2797  
512/225-4191

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A county commissioners court has only the powers conferred either expressly or by necessary implication by the constitution and statutes of this state. See Tex. Const. art. V, §18; Canales v. Laughlin, 214 S.W.2d 451, 453 (Tex. 1948). The limited authority granted to local political subdivisions under article 3.51-2 of the Insurance Code does not encompass your particular arrangement; such authority must be found elsewhere. Id. This office has held on numerous occasions that the Interlocal Cooperation Act, article 4413(32c), in sections 4(a) and 4(b), V.T.C.S., authorizes a county to contract with other counties or local political subdivisions for the performance of

governmental services and functions, as defined in section 3(2), which all parties to the contract are legally authorized to perform. See Attorney General Opinions MW-347 (1981); H-392 (1974); H-28 (1973); M-1278 (1972). Therefore, the Interlocal Cooperation Act authorizes Randall County to contract with other local entities only if there is independent statutory or constitutional authority for the county to provide a self-funded insurance plan for its department heads, employees, and their dependents.

In Attorney General Opinion MW-473 (1982), this office further held:

There is statutory authority for a commissioners court to adopt an insurance plan to provide hospitalization insurance for county officials and employees. V.T.C.S. art. 2372h-2. Further authority is also found in the Texas Insurance Code in articles 3.51 and 3.51-2. However, these statutes do not authorize the implementation of a plan to provide self-insurance or to provide group insurance that would be in contravention of the Texas Insurance Code.

Id. at 1658. Article 2372h, section 2, V.T.C.S., authorizes a commissioners court of a county having a population of 500,000 or more to adopt rules and regulations to establish a hospital and insurance fund for county employees as a part of their employment contract. You inform us that Randall County currently has a population of approximately 76,000 inhabitants. Since there is a particular statute authorizing a plan by certain counties, but no statute regarding Randall County, we conclude that there is no authority for Randall County to join a self-funding health plan for its employees.

Article 3.51-2 of the Insurance Code authorizes any county or political subdivision of a county to procure certain group insurance policies covering officers, employees, and their dependents. However, the provision does not provide for the self-funded health plan you describe in this request. Article 3.51-2, part (a) of the Insurance Code only authorizes the county to "procure contracts" or purchase insurance from an insurance company as opposed to specifically allowing the entities to self-fund a health insurance plan as the legislature has provided in another statute amended during the same session. See Ins. Code art. 3.50-3, §4(d) (governing boards of colleges and universities may provide self-funded insurance plans for employees).

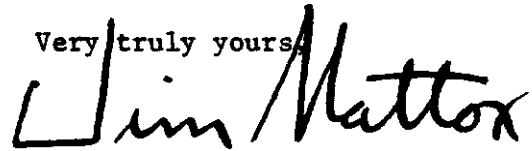
We can find no other independent statutory basis authorizing the Randall County Commissioners Court to provide a self-funded insurance plan for its employees, department heads, and their dependents. It is

our opinion that the county may not contract with the entities described above under the Interlocal Cooperation Act.

S U M M A R Y

The Randall County Commissioners Court is not authorized to contract with nearby state governmental entities to form a pool for a self-funding health and hospitalization plan for its employees, department heads, and their dependents.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive style with a large, stylized "J" and "M".

J I M   M A T T O X  
Attorney General of Texas

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